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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION**

CHASOM BROWN, *et al.*, individually and
on behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 4:20-cv-03664-YGR-SVK

**DECLARATION OF DONALD SETH
FORTENBERY IN SUPPORT OF
PLAINTIFFS' MOTION TO CONSIDER
WHETHER PORTIONS OF
PLAINTIFFS' REPLY IN SUPPORT OF
MOTION TO STRIKE NON-RETAINED
EXPERT DECLARATIONS SHOULD BE
SEALED**

Judge: Hon. Yvonne Gonzalez Rogers

Case No. 4:20-cv-03664-YGR-SVK

FORTENBERY DECLARATION ISO ADMINISTRATIVE MOTION TO SEAL

1 I, Donald Seth Fortenbery, declare as follows:

2 1. I am a member of the bars of the States of Kentucky and New York, and an attorney
3 at Quinn Emanuel Urquhart & Sullivan, LLP, attorneys for Defendant Google LLC (“Google”) in
4 this action. I have been admitted pro hac vice in this matter. Dkt. 547. I make this declaration of my
5 own personal, firsthand knowledge, and if called and sworn as a witness, I could and would testify
6 competently thereto.

7 2. I am making this declaration pursuant to Civil Local Rule 79-5(e)-(f) as an attorney
8 for Google as the Designating Party, pursuant to Civil Local Rule 79-5(f)(3) in response to Dkt.
9 752.

10 3. On September 21, 2022, Plaintiffs filed their Administrative Motion to Consider
11 Whether Google’s Materials Should Be Sealed regarding Plaintiffs’ Reply In Support Of Motion to
12 Strike Non-Retained Expert Declarations for Whom Google Provided No Expert Report. On
13 September 21, 2022, Plaintiffs’ provided an unredacted service copy of the documents sought to be
14 sealed.

15 4. The common law right of public access to judicial proceedings is not a constitutional
16 right and it is “not absolute.” *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978); *Crowe v.*
17 *Cty. of San Diego*, 210 F. Supp. 2d 1189, 1194 (S.D. Cal. 2002) (“[T]here is no right of access which
18 attaches to all judicial proceedings.” (internal citations omitted)). The right is weakest where, as
19 here, the proceedings concern a non-dispositive discovery motion; rather than satisfy the more
20 stringent “compelling reasons” standard, a party seeking to seal materials in these circumstances
21 must make only a “particularized showing” of “good cause.” *Kamakana v. City & County of*
22 *Honolulu*, 447 F.3d 1172, 1178–80 (9th Cir. 2006). Such sealing is appropriate when the information
23 at issue constitutes “competitively sensitive information,” such as “confidential research,
24 development, or commercial information.” *France Telecom S.A. v. Marvell Semiconductor Inc.*,
25 2014 WL 4965995, at *4 (N.D. Cal. Oct. 3, 2014); *see also Phillips v. Gen. Motors Corp.*, 307 F.3d
26 1206, 1211 (9th Cir. 2002) (acknowledging courts’ “broad latitude” to “prevent disclosure of
27 materials for many types of information, including, but not limited to, trade secrets or other
28 confidential research, development, or commercial information”); *Standard & Poor’s Corp. Inc. v.*

1 *Commodity Exch., Inc.*, 541 F. Supp. 1273, 1275 (S.D.N.Y. 1982) (“[T]he overriding interest to be
2 found in business confidences . . . require[s] . . . temporary reasonably restricted access to the
3 Courtroom of members of the public.”).

4 5. I have reviewed the documents that Plaintiffs seek to file under seal pursuant to Civil
5 Local Rule 79-5(f). Based on my review, there is good cause to seal the following information:

Document(s) to be Sealed	Basis for Sealing
<p>6 Plaintiffs’ Reply In Support Of</p> <p>7 Motion to Strike Non-Retained</p> <p>8 Expert Declarations for Whom</p> <p>9 Google Provided No Expert</p> <p>10 Report (Dkt. 705)</p> <p>11 Pages: 8:10, 8:13, 8:17</p> <p>12 Google joins Plaintiffs’ motion to</p> <p>13 seal in FULL with respect to this</p> <p>14 document.</p>	<p>The information requested to be sealed contains Google’s highly confidential and proprietary information regarding highly sensitive features of Google’s internal systems and operations, such as Google’s internal projects and project code names, that Google maintains as confidential in the ordinary course of its business and is not generally known to the public or Google’s competitors. Such confidential and proprietary information reveals Google’s internal strategies, system designs, and business practices for operating and maintaining many of its important services, and falls within the protected scope of the Protective Order entered in this action. <i>See</i> Dkt. 81 at 2–3. Public disclosure of such confidential and proprietary information could affect Google’s competitive standing as competitors may alter their systems and practices relating to competing products. It may also place Google at an increased risk of cybersecurity threats, as third parties may seek to use the information to compromise Google’s internal practices relating to competing products.</p>

18 6. Google’s request is narrowly tailored in order to protect its confidential information.
19 These redactions are limited in scope and volume. Because the proposed redactions are narrowly
20 tailored and limited to portions containing Google’s highly-confidential or confidential information,
21 Google requests that the portions of the aforementioned documents be redacted from any public
22 version of those documents.

23 7. Google does not seek to redact or file under seal any of the remaining portions of
24 documents not indicated in the table above.

25 I declare under penalty of perjury of the laws of the United States that the foregoing is true
26 and correct. Executed in Hoboken, New Jersey on September 27, 2022.
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By /s/ Donald Seth Fortenbery
Donald Seth Fortenbery